90-1424

No. [redacted]

Supreme Court, U.S.
FILED
AUG 29 1991
OFFICE OF THE CLERK

IN THE

United States Supreme Court

October Term, 1991

MANUEL LUJAN, Jr., Secretary of the Interior,
Petitioner,

v.

DEFENDERS OF WILDLIFE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF *AMICI CURIAE* ECOTROPICA FOUNDATION OF BRAZIL, SLOVAK UNION OF NATURE AND LANDSCAPE PROTECTORS, FUNDACION DE PARQUES NACIONALES OF COSTA RICA, AND GREENPEACE INTERNATIONAL IN SUPPORT OF RESPONDENTS

DURWOOD J. ZAELKE*
ROBERT F. HOUSMAN
DONALD M. GOLDBERG
DAVID R. DOWNES

CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW—U.S.
1621 Connecticut Avenue, N.W.
Washington, D.C. 20009
(202) 332-4840

Counsel for Amici Curiae

*Counsel of Record

TABLE OF CONTENTS

Page

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 2

THE *FOLEY* PRESUMPTION IS INAPPLICABLE TO ENVIRONMENTAL LAWS 2

CONTEMPORARY ASSUMPTIONS ABOUT CONGRESS' EXPERIENCE AND INTENT SHOW THE NEED TO REVERSE THE *FOLEY* PRESUMPTION SO THAT ENVIRONMENTAL STATUTES ARE PRESUMED TO APPLY EXTRATERRITORIALLY 3

CONSISTENT WITH THIS COURT'S PRIOR DECISIONS, ENVIRONMENTAL LAWS SHOULD APPLY EXTRATERRITORIALLY BECAUSE OF THEIR HARMFUL DOMESTIC EFFECTS..... 3

ARGUMENT 4

I. THE *FOLEY* PRESUMPTION IS INAPPLICABLE TO ENVIRONMENTAL LAWS 4

A. The Assumptions Underlying *Foley* 4

B. The Assumptions Underlying *Foley* Do Not Apply to Environmenal Laws and Therefore The *Foley* Presumption Itself Is Inapplicable. 4

1. Congress' Environmental Concerns Go Beyond Domestic Conditions. 5

2. The Extraterritorial Application Of United States Laws To American Actions Abroad Does Not Give Rise To Potential For International Conflicts. 9

Page

II. CONTEMPORARY ASSUMPTIONS ABOUT CONGRESS' EXPERIENCE AND INTENT SHOW THE NEED TO REVERSE THE *FOLEY* PRESUMPTION SO THAT ENVIRONMENTAL STATUTES ARE PRESUMED TO APPLY EXTRATERRITORIALLY 11

III. CONSISTENT WITH THIS COURT'S PRIOR DECISIONS, ENVIRONMENTAL LAWS SHOULD APPLY EXTRATERRITORIALLY BECAUSE OF THEIR HARMFUL DOMESTIC EFFECTS, ... 12

A. A Finding of Harmful Domestic Effects Is Sufficient to Find Extraterritorial Jurisdiction. 12

B. Actions Which Damage the Environment Outside the United States Have Direct and Substantial Harmful Effects Within the United States 13

CONCLUSION 20

TABLE OF AUTHORITIES

Page

Cases:

Supreme Court:

American Banana Co. v. United Fruit Co.,
213 U.S. 347 (1909) 4

Argentine Republic v. Amerada Hess Shipping Corp.,
488 U.S. 428 (1989) 13

Continental Ore Co. v. Union Carbide & Carbon Corp.,
370 U.S. 701 (1962) 12

EEOC v. Arabian American Oil Co.,
111 S.Ct. 1227 (1991) ..... *passim*

Foley Bros. v. Filardo,
336 U.S. 281 (1949) ..... *passim*

New York Cent. R.R. v. Chisholm,
268 U.S. 29 (1925) 13

Steele v. Bulova Watch Co.,
344 U.S. 280 (1952) 12

Thomsen v. Cayser,
243 U.S. 66 (1917) 12

United States v. Albertini,
472 U.S. 675, 680 (1985) 5, 7

United States v. American Tobacco Co.,
221 U.S. 106 (1911) 12

United States v. Bowman,
260 U.S. 94 (1922) 19

United States v. Pacific & Arctic R. & Navigation Co.,
228 U.S. 87 (1913) 12

Page

United States v. Sisal Sales Corp.,
274 U.S. 268 (1927) 12

United States v. Universal C.I.T. Credit Corp.,
344 U.S. 218 (1952) 5

Weinberger v. Rossi,
456 U.S. 25 (1982) 5

Circuit Courts:

Speiss v. C. Itoh & Co.,
643 F.2d 353 (1981) 18

Timberlane Lumber Co. v. Bank of America,
549 F.2d 597 (9th Cir. 1977) 13

Statutes:

Civil Rights Act, 42 U.S.C. §§ 2000e-2(a) 17

Endangered Species Act of 1973,
16 U.S.C. 1531 *et seq.:* ..... *passim*

16 U.S.C. §§ 1331-44 5
16 U.S.C. § 1531(a)(4) 6
16 U.S.C. § 1533(b) 6
16 U.S.C. § 1536(n) 6
16 U.S.C. §§ 1537(a)-(d) 6
16 U.S.C. § 1538 6
16 U.S.C. §§ 1538(c) 6

Federal Employees Liability Act,
45 U.S.C. § 51 *et seq.* 13

Labor Management Relations Act, 29 U.S.C. § 141 13

Securities Exchange Act, 15 U.S.C. § 78c(a)(17) 12

Page

Sherman Act, 15 U.S.C. §§ 1, 2 12

Legislative Materials:

H.R. 2358, 101st Cong., 2nd Sess. (1991) 6

H.R. 2525, 101st Cong., 1st Sess. (1989) 7

H.R. 3736, 101st Cong., 1st Sess. (1989) 7

S. 984, 102d Cong., 1st Sess. (1991) 6

S. 1278, 101st Cong., 2d Sess. (1991) 6

Articles:

J. Brown & E. Heske, *Control of a Desert-Grassland Transition by a Keystone Rodent Build*, 250 Science 1705 (1990) 16

Bush Administration Proposes Measure to Ratify Basel Accord on Hazardous Waste, 14 BNA Int'l. Envtl. L. Rep. 237 (1991) 6

D. Chadwick, *Elephants: Out of Time, Out of Space*, Nat'l Geographic, May, 1990, at 2 16

Developments in the Law: International Environmental Law, 104 Harv. L. Rev. 1484 (1991) 8

G. Handl, *Environmental Security and Global Climate Change: The Challenge to International Law*, 1 Yearbook of Int'l EnvH. L. 3 (1991) 10

G. Handl, *Environmental Protection and Development in Third World Countries: Common Destiny — Common Responsibility*, 20 N.Y.U.J. Int'l L. & Pol 603 (1988) 8

Mexico's Maquiladoras — Free Trade, or Foul Play?, E: The Environmental Magazine, July/Aug. 1991, at 36 9

Page

Proposal Would Impose Strict Controls on Exports of Hazardous, Other Wastes, 14 BNA Int'l Envtl. L.Rep. 273 (1991) 7

Secrets of Animal Navigation, Nat'l Geographic, June 1991, at 70 14

Shrinking Herds and Habitats, Nat'l Geographic, May, 1991, at 14 14

Species Loss: Crisis or False Alarm, N.Y. Times, Aug. 20, 1991, at C 1, col. 1. 14

J. Turley, *"When In Rome": Multinational Misconduct and the Presumption Against Extraterritoriality*, 84 Nw. U.L. Rev. 598 (1990) ..... *passim*

Wirth-Heinz Study Calls for Market Approach to Solve Global Warming, Solid Waste Issues, 14 BNA Int'l Envtl. L. Rep. 273 (1991) 6

Wash. Post, Aug. 14, 1991, A14, col. 1 11

Miscellaneous:

J. Abramovitz, *Investing in Biological Diversity: U.S. Research and Conservation Efforts in Developing Countries* (1991) 14, 15

P. Ashton, *Dipterocarp Reproductive Biology*, in H. Lieth & M. Werger, eds., *Tropical Rain-forest Ecocystems: Biogeographical and Ecological Studies* (1989) 16

Page

Committee on International Science's Task Force on Global Biodiversity: National Science Board, *Loss of Biological Diversity: A Global Crisis Requiring International Solutions: A Report to the National Science Board* (1989) 8, 14, 15

Council on Environmental Quality: The Executive Office of the President, *Environmental Quality: Twentieth Annual Report* (1990) 7, 8, 14

DuPont, *Corporate Environmentalism: A Collection of Remarks by DuPont Chairman, E.S. Wooland, Jr.* (Nov. 19, 1990) 17, 18

L. Kochan, *The Maquiladoras and Toxics: The Hidden Costs of Production South of the Border* (1989) 9

A. Leopold, *A Sand County Almanac* (1949) 16, 17

Lukens Subcommittee to Hold Hearings on Comprehensive Environmental Bill 2, Jan. 23, 1990 (press release from Rep. Tom Lukens) 7

K. Miller & L. Tangley, *Trees of Life Saving Tropical Forests and Their Biological Wealth* (1991) 14, 15, 16

C. Morrison, C. *Managing Environmental Affairs: Corporate Practices in the U.S., Canada and Europe* (1991) 18

W. Morrissey, *Congressional Research Service Report for Congress: A Compendium of Legislation Introduced in the 101st Congress, 1st Session, Relating to Global Climate Change* (1990) 6

Page

B. Piaseki & P. Asmus, *In Search of Environmental Excellence: Moving Beyond Blame* (1990) 17

Restatement (Third) Foreign Relations Law § 601(1)(b) (1987) 9

D. Rosenthal 8 W. Knighton, *National Laws and International Commerce* (1982) 13

Stockholm Declaration on the Human Environment, principle 21, reprinted in 11 I.L.M. 1416 (1972) 10

United States Environmental Protection Agency, *The Potential Effects of Global Climate Change on the United States* (1989) 8

United States General Accounting Office, *Report to the Chairman, Environment, Energy and Natural Resources Committee on Government Operations, House of Representatives, Pesticides: Export of Unregistered Pesticides Is Not Adequately Monitored By EPA* (1989) 10

United States International Trade Commission, *International Agreements to Protect the Environment and Wildlife: Report to the Committee on Finance, U.S. Senate, on Investigation No. 332-287 Under Section 332 of the Tariff Act of 19309* (1991) 18

D. Weir, *The Bhopal Syndrome* (1986) 10

World Meteorological Organization/United Nations Environment Programme: Intergovernmental Panel On Climate Change, *Climate Change: The IPCC Impacts Assessment* (1990) 8

United States Supreme Court

October Term, 1991

No. 90-925

MANUEL LUJAN, Jr., Secretary of the Interior,
Petitioner

v.

DEFENDERS OF WILDLIFE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF *AMICI CURIAE* ECOTROPICA FOUNDATION OF BRAZIL, SLOVAK UNION OF NATURE AND LANDSCAPE PROTECTORS, FUNDACION DE PARQUES NACIONALES OF COSTA RICA, AND GREENPEACE INTERNATIONAL IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37.3, the above listed organizations file this brief as *Amici Curiae* in support of Respondents. Letters of consent from counsel for the parties have been filed with the Clerk.

Amici are foreign and international organizations concerned with the protection of the global environment, including the preservation of the Earth's species and more broadly the preservation of the Earth's biodiversity. These organizations are striving for new and better ways to accomplish this goal through international cooperation and an understanding that environmental problems know no territorial or jurisdictional boundaries.

This case concerns whether or not the American government in its actions abroad must pay heed to protecting the species inhabiting the nations in which the *Amici* are based, and in which th[illegible]ctively involved in efforts to preserve endangered and t[illegible]d species. The decision will have a direct effect on the ability of the *Amici* to meet their goals of species preservation in their nations and around the globe. A more detailed description of each *Amicus* appears in the Appendix.

SUMMARY OF ARGUMENT

THE *FOLEY* PRESUMPTION IS INAPPLICABLE TO ENVIRONMENTAL LAWS

The presumption enunciated by the Court in *Foley Bros. v. Filardo*, 336 U.S. 281 (1949), against the extraterritorial application of American laws is a canon of construction that is inapplicable in the context of environmental law. This presumption is based on the assumptions that Congress is primarily concerned with domestic conditions and that the extraterritorial application of American laws should be limited to prevent conflicts between our laws and those of other nations. *Foley Bros. v. Filardo*, 336 U.S. 281 (1949); *EEOC v. Arabian American Oil Co.*, 111 S.Ct. 1227 (1991). Neither of these assumptions apply to the sphere of environmental law and therefore the *Foley* presumption should not be applied.

CONTEMPORARY ASSUMPTIONS ABOUT CONGRESS' EXPERIENCE AND INTENT SHOW THE NEED TO REVERSE THE *FOLEY* PRESUMPTION SO THAT ENVIRONMENTAL STATUTES ARE PRESUMED TO APPLY EXTRATERRITORIALLY.

In this age of growing interdependence, Congress is increasingly being called upon to adopt legislative measures aimed at addressing global environmental threats. In order to avoid frustrating Congress' legitimate efforts to resolve these threats, a new presumption is required that American environmental laws are extraterritorial in scope unless there is a clear statement by Congress to the contrary.

CONSISTENT WITH THIS COURT'S PRIOR DECISIONS, ENVIRONMENTAL LAWS SHOULD APPLY EXTRATERRITORIALLY BECAUSE OF THEIR HARMFUL DOMESTIC EFFECTS.

If this Court is unwilling to adopt a presumption of extraterritoriality, then the Court should recognize that, consistent with the Court's prior decisions, environmental laws should be applied extraterritorially in light of the harmful domestic effects of environmental threats.

ARGUMENT

I. THE *FOLEY* PRESUMPTION IS INAPPLICABLE TO ENVIRONMENTAL LAWS.

A. The Assumptions Underlying *Foley*.

The *Foley* presumption is a canon of construction which provides that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States. . . ." *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949).[1] The *Foley* Court based this presumption on the "assumption that Congress is primarily concerned with domestic conditions." *Id.* at 285. In *EEOC v. Arabian American Oil Co.*, 111 S.Ct. 1227 (1991), this Court stated a second assumption, that the extraterritorial application of American laws should be limited to prevent "clashes between our laws and those of other nations which could result in international discord." *Id.* at 1230.[2]

B. The Assumptions Underlying *Foley* Do Not Apply to Environmental Laws and Therefore The *Foley* Presumption Itself Is Inapplicable.

Canons of construction such as the *Foley* presumption "are not rules of law but merely axioms of experience." *See Weinberger v. Rossi*, 456 U.S. 25, 28 (1982) (quoting *United*

---

[1]The origins of the *Foley* presumption can be found in *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909). *See* J. Turley, *"When In Rome": Multinational Misconduct and the Presumption Against Extraterritoriality*, 84 Nw. U.L. Rev. 598, 634 (1990).

[2]The rationale for this second assumption also appears to be an outgrowth of the Court's 1909 decision in *American Banana Co. v. United Fruit Co.*, 213 U.S. 347 (1909). *Compare Arabian American Oil Co.*, 111 S.Ct. at 1230, *with American Banana*, 213 U.S. at 355-6.

States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221 (1952)). These axioms of experience are valid only as long as they accurately reflect Congress' experience and intent.[3] Before applying a canon of construction courts must determine, in light of each specific situation, whether or not the canon is valid in that context.[4]

Because the assumptions underlying *Foley* no longer reflect Congress' experience or intent regarding environmental issues in general and the Endangered Species Act of 1973, Pub. L. No. 93-205, Dec. 28, 1973 (codified as amended at 16 U.S.C. §§ 1331-44) (the "Endangered Species Act"), in particular, the *Foley* presumption impedes Congress' efforts to address the global environmental threats now faced by the United States.

1. Congress' Environmental Concerns Go Beyond Domestic Conditions.

The "assumption that Congress is primarily concerned with domestic conditions," *Foley*, 336 U.S. at 285, does not reflect congressional experience or intent in the field of environmental legislation. No other area of international law has received more congressional consideration than the international environmental area, where Congress has repeatedly and explicitly recognized the necessity for global responses to environmental

---

[3]*See United States v. Albertini*, 472 U.S. 675, 680 (1985) (emphasizing that an "interpretive canon is not a license for the judiciary to rewrite" legislation).

[4]*Accord Weinberger v. Rossi*, 456 U.S. 25, 28 (1982) (quoting *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221 (1952)) (noting that canons of construction do not relieve a Court from having to look to the particular situation in question in construing a statute).

Here the Court need not even perform this analysis. As a threshold matter, the presumption is not properly applied here because the locus of the agency decisionmaking is solely within the United States.

threats.[5] In light of this international perspective, Congress has undertaken extensive efforts to regulate environmental threats caused by American actions far beyond this nation's borders.[6] Such legislative efforts seek to regulate American

---

[5]The following *noninclusive* list of references to recent Congressional activity in the international environmental sphere demonstrates Congress' concerns about international environmental policy: S. 984, 102d Cong. 1st Sess. (1991) (International Pollution Deterrence Act of 1991); HR. 2358, 101st Cong., 2nd Sess. (1991) (Waste Export Control Act); S. 1278, 101st Cong. 2d Sess. (1991) (bill aimed at ensuring that judicial challenges to the National Environmental Policy Act of 1969 do not affect its extraterritorial application); *Bush Administration Proposes Measure to Ratify Basel Accord on Hazardous Waste*, 14 BNA Int'l Envtl. L. Rep. 237, 257 (1991) (Hazardous and Additional Waste Export and Import Act, covering transboundary shipment and disposal of wastes sent to Congress by President on May 6, 1991); *Wirth-Heinz Study Calls for Market Approach to Solve Global Warming, Solid Waste Issues*, 14 BNA Int'l Envtl. L. Rep. 273, 285 (1991) (Senator Wirth and late Senator Heinz's report on international trading systems as a means to solve international environmental problems of global warming and solid waste disposal); *see generally*, W. Morrissey, *Congressional Research Service Report for Congress: A Compendium of Legislation Introduced in the 101st Congress, 1st Session, Relating to Global Climate Change*, 1990 (reciting forty-nine separate legislative responses to global warming).

Moreover, as the Endangered Species Act itself demonstrates, Congress has long since removed its domestic blinders when legislating against environmental threats. The primary purpose of the Endangered Species Act was to implement a number of international environmental protection treaties concerning wildlife and its habitats. *See, e.g.*, 16 U.S.C. § 1531(a)(4) pledging as a member of the "International community . . . to conserve . . . the various species of fish and wildlife facing extinction. . . ."); 16 U.S.C. § 1533(b) (Endangered Species Act provision requiring listing of foreign endangered and threatened species); 16 U.S.C. §§ 1538(c), 1537(a)-(d) (Endangered Species Act sections implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249). Further, the Act itself provides for extraterritorial judicial review. 16 U.S.C. § 1536(n) (providing jurisdiction to the D.C. Circuit). In fact, the only specific domestic limitations on the Act appear in parts of Section 9. *See* 16 U.S.C. § 1538.

[6]*See supra* n. 5 (setting out extraterritorial legislative efforts).

actions abroad even where there are only the most attenuated direct physical effects on domestic American health and safety.[7] This evidence of congressional environmental experience and intent transcending domestic concerns renders the underlying assumption in *Foley* inapplicable; Congress' concerns clearly go beyond domestic conditions.[8]

Congressional efforts to address international environmental threats are reflected in the understanding and experience of federal agencies regarding the global nature of environmental threats, including the President's Council on Environmental Quality, which recently noted that:

> Environmental problems do not stop at national frontiers, or ideological barriers. Pollution in the atmosphere and oceans taints all nations, even those

---

[7]Legislation under consideration requiring American wastes disposed of overseas to meet United States disposal standards shows the extent to which congressional concerns about the environment extend beyond domestic interests. *See e.g.*, H.R. 3736, 101st Cong., 1st Sess. (1989); H.R. 2525, 101st Cong., 1st Sess. (1989). The Congressional intent underlying this legislation is primarily to protect citizens of the waste recipient nations:

> It would be utterly irresponsible and hypocritical for the United States to export wastes to other countries with environmental standards less strict than ours. This would be the equivalent of saying, "What is good enough for you is not good enough for us." I find this intolerable.

Lukens Subcommittee to Hold Hearings on Comprehensive Environmental Bill 2, Jan. 23, 1990 (press release from Rep. Tom Lukens); *Proposal Would Impose Strict Controls on Exports of Hazardous, Other Wastes*, 14 BNA Int'l Envtl. L. Rep. 273, 287 (1991) (quoting Representative Synar) ("We cannot justify a dual set of standards which afford less protection to citizens of other nations than we demand of ourselves.")

[8]*See United States v. Albertini*, 472 U.S. 675, 680 (1985) (judicial presumption of congressional intent is only valid to the extent that it actually reflects congressional intent).

> benignly favored by geography, climate or natural resources.

Council on Environmental Quality: The Executive Office of the President, *Environmental Quality: Twentieth Annual Report*, 260 (1990).

Congressional efforts reflect the understanding of the scientific community that environmental problems in one nation have both direct and indirect effects on surrounding nations, the global commons, and even upon nations geographically far removed.[9] Global warming, primarily caused by carbon dioxide emissions from developed nations, threatens to inundate island nations and turn America's wheat belt into America's dust bowl.[10] Pollution from American-owned-

---

[9]*See* Committee on International Science's Task Force on Global Biodiversity: National Science Board, *Loss of Biological Diversity: A Global Crisis Requring International Solutions: A Report to the National Science Board*, 3 (1989).

> The loss of tropical moist forests can have profound and far-reaching effects, including: changes in climate, especially rainfall patterns; changes in biological productivity; soil erosion; and an increase in emissions of "greenhouse" gases, which further affects global climate.

Id.; G. Handl, *Environmental Protection and Development in Third World Countries; Common Destiny-Common Responsibility*, 20 N.Y.U. J. Int'l L. & Pol'y 603, 605 (1988) ("Environmental degradation in Third World countries tends to have multiple transnational repercussions."); *see also Developments in the Law: International Environmental Law*, 104 Harv. L. Rev. 1484, 1484 (1991) (quoting the Grateful Dead) (noting that in terms of global interconnectedness we have but one irreplaceable planet and nowhere else to run to).

[10]*See* World Meteorological Organization/United Nations Environment Programme: Intergovernmental Panel On Climate Change, *Climate Change: The IPCC Impacts Assessment*, 6-2 to 6-3 (1990) (discussing inundation of island states which could occur with only a one-meter rise in sea level); United States Environmental Protection Ageny, *The Potential Effects of Global Climate Change on the United States*, 101, 105, 177 (1989) (discussing effects of global warming on American agriculture in the wheat belt).

Mexican-based industrial development along the American border has already despoiled the regional watershed.[11]

Thus it must be assumed that Congress' experience and intent in addressing environmental threats which are inherently international, is based on an understanding of the extraterritorial nature of the threats.[12]

2. The Extraterritorial Application Of United States Laws To American Actions Abroad Does Not Give Rise To The Potential For International Conflicts.

The second assumption, that the extraterritorial application of American laws should be limited to prevent "clashes between our laws and those of other nations which could result in international discord," *Arabian American Oil Co.*, 111 S.Ct. at 1230, does not reflect the experience in the environmental field.

The extraterritorial application of environmental laws, including the Endangered Species Act, to actions of the United States government overseas fulfills the obligation under recognized principles of international law for all states to act in such a way "so as not to cause significant injury to the environment of another state. . . ." Restatement (Third) Foreign Relations Law § 601(1)(b) (1987). Further, international law recognizes that this obligation is not limited to actions of a country within its own jurisdiction, but applies to its actions

---

[11]*See* L. Kochan, *The Maquiladoras and Toxics: The Hidden Costs of Production South of the Border*, 6-7 (1989); *Mexico's Maquiladoras — Free Trade, or Foul Play?*, E: The Environmental Magazine, July/Aug., 1991, 36, 36-37 ("Santa Cruz County, Arizona, had to declare a state of emergency after millions of gallons of raw sewage flowed into its system from Mexico. . . . [In] Nogales, Arizona, downstream from some maquiladoras, the hepatitis rate has shot up to 20 percent over the national average.").

[12]*See* Turley, *supra* n. 1, at 656.

internationally; "States have, in accordance with the Charter of the United Nations and principles of international laws . . . the responsibility to ensure that activities within their jurisdiction *or control* do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." Stockholm Declaration on the Human Environment, principle 21, *reprinted in* 11 I.L.M. 1416 (1972) (emphasis added).

All states must conform their actions to these international principles.[13] It is the American government's failure to avoid harming the environment of another state and its failure to provide the citizens of other nations the same environmental protection afforded to citizens within the United States, that creates the potential for international conflict.[14]

Thus it is more appropriate to assume that as Congress addresses environmental threats, which are inherently international, it does so with an understanding of the international legal obligation of each state to avoid causing environmental injury within another state.

---

[13]In addition to the responsibilities of nations to regulate the conduct of their citizens and their agencies, international law-making in the environmental field is becoming more centralized, leaving less room for national standards to vary. *See* G. Handl, *Environmental Security and Global Climate Change: The Challenge to International Law*, 1 Yearbook of Int'l Envtl. L. 3, 12-13 (1991).

[14]*See* United States General Accounting Office, *Report to the Chairman, Environment, Energy and Natural Resources Committee on Government Operations, House of Representatives, Pesticides: Export of Unregistered Pesticides Is Not Adequately Monitored by EPA*, 27-29 (1989) (discussing inadequacies of EPA's procedures for notifying foreign countries); D. Weir, *The Bhopal Syndrome* (1986) (discussing the political damage caused by the United States failure to prohibit the manufacture and export of herbicides and pesticides banned in the United States).

II. CONTEMPORARY ASSUMPTIONS ABOUT CONGRESS' EXPERIENCE AND INTENT SHOW THE NEED TO REVERSE THE *FOLEY* PRESUMPTION SO THAT ENVIRONMENTAL STATUTES ARE PRESUMED TO APPLY EXTRATERRITORIALLY.

Congress is increasingly required to legislate solutions to global environmental threats. In order to avoid frustrating Congress' efforts, any presumption regarding extraterritoriality must recognize that "the extraterritorial enforcement of United States laws is becoming increasingly important to the nation's ability to protect its own vital interests."[15] Such a presumption must also recognize that Congress understands the international nature of environmental threats; that Congress understands that conflicts with the laws of other nations will be avoided where United States environmental laws prevent harm to the environment of other states; and that Congress legislates accordingly. These contemporary assumptions, together with the urgency of global environmental threats, require reversal of the *Foley* presumption so that United States environmental statutes are now presumed to apply extraterritorially.

Reversing the presumption provides Congress with clear guidance in drafting legislation and prevents frustration of congressional efforts that are practically or logically extraterritorial in scope.[16] Such a presumption still leaves courts free to

---

[15]Wash. Post, Aug. 14, 1991, A14, col. 1 (quoting Department of Justice memorandum on international terrorism and drug trafficking).

[16]*See* Turley, *supra* n. 1, at 662 (noting that a presumption in favor of extraterritoriality provides Congress with notice of what is expected of it in crafting new legislation, and avoids the legislative pitfalls inherent in requiring congressional efforts to overcome a presumption against extraterritoriality). For evidence that Congress has not received clear guidance from the decided cases, compare the conflicting holdings in the market-based and non-market cases regarding extraterritorial jurisdiction. *See, infra* nn. 18, 19 and accompanying text.

examine on a case-by-case basis whether the statute in question is on its face not extraterritorial.[17] Similarly, after determining the extraterritoriality of a statute, any potential issues of conflicts of law can be resolved under traditional analyses.

III. CONSISTENT WITH THIS COURT'S PRIOR DECISIONS, ENVIRONMENTAL LAWS SHOULD APPLY EXTRATERRITORIALLY BECAUSE OF THEIR HARMFUL DOMESTIC EFFECTS.

A. A Finding of Harmful Domestic Effects Is Sufficient to Find Extraterritorial Jurisdiction.

Statutes with ambiguous congressional intent have been applied to regulate actions outside the United States where those actions would have harmful effects within the United States.[18]

---

[17] *See Foley*, 336 U.S. at 285 (noting presumption only applies where statute is silent as to congressional intent).

[18] Statutes which have been given extraterritorial reach include the Sherman Act, 15 U.S.C. §§ 1, 2 (applying, resepectively, to "[e]very contract . . . in restraint of . . ." and "[e]very person who shall monopolize, or attempt to monopolize . . . any part of" "the trade or commerce among the several States, or with foreign nations"); and the Securities Exchange Act, 15 U.S.C. §§ 78c(a)(17) (interstate commerce includes "trade, commerce, transportation or communications . . . between any foreign country and any state. . ."); *see also Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 701 (1962) (finding Sherman Act applies to acts by U.S. and Canadian corporations which occurred in Canada and had effects in U.S.); *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952) (applying Lanham Act in a trademark action to acts committed in Mexico that "radiated" effects in U.S.); *United States v. Sisal Sales Corp.*, 274 U.S. 268 (1927) (applying Sherman Act to acts committed in Mexico furthered by preferential Mexican legislation); *Thomsen v. Cayser*, 243 U.S. 66 (1917) (permitting prosecution for conspiracy organized abroad on the basis of presumed domestic effects); *United States v. Pacific & Arctic R. & Navigation Co.*, 228 U.S. 87 (1913) (extending jurisdiction over a Canadian corporation where conduct took place both inside and outside the U.S.); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911) (applying Sherman Act to an agreement executed in England to monopolize both exports from and imports to the United States).

This "effects test" is applied primarily in market-based cases; in non-market cases, despite virtually identical jurisdictional langauge, courts have generally restricted their inquiry to the four corners of the statute and have not looked for domestic effects.[19] While the effects test leaves room for courts to balance competing interests such as conflict of laws,[20] such conflicts have not prevented courts from finding extraterritorial jurisdiction.[21]

B. Actions Which Damage the Environment Outside the United States Have Direct and Substantial Harmful Effects Within the United States.

Environmental problems, including species loss, cannot be confined within national borders.[22] The tremendous value that

---

[19]Statutes which have been limited to domestic application include the Labor Management Relations Act, 29 U.S.C. § 141 (which applies to industries affecting "commerce" between any foreign country and any foreign state"); and the Federal Employees Liability Act, 45 U.S.C. § 51 *et seq.* (which provides that railroads engaged in "interstate commerce or foreign commerce" or commerce between "any of the States or territories and any foreign nation or nations" shall be liable to employees who suffer injuries resulting from their employment). *See EEOC v. Arabian American Oil Co.*, 111 S.Ct. 1227 (1991) (employment discrimination between private parties in Saudi Arabia); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 (1989) (Liberian tanker attacked by Argentine military planes in international waters); *Foley Bros. v. Filardo*, 336 U.S. 281 (1948) (labor dispute between private parties in Iran and Iraq); *New York Cent. R.R. v. Chisholm*, 268 U.S. 29 (1925) (injury of railroad employee 30 miles inside Canada).

[20]*See Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597, 615 (9th Cir. 1976) (adopting three-tiered conflicts test).

[21]*See* D. Rosenthal & W. Knighton, *National Laws and International Commerce*, 18-42 (1982) (discussing the substantial conflicts with the laws of other nations that have arisen in market effects cases); *see also Timberlane*, 549 F.2d at 608 n. 12 (1976) (noting that, out of 248 foreign trade antitrust cases filed by the Department of Justice, not one was lost for want of jurisdiction).

[22]Species do not respect national borders. Both migratory and non-migratory species' ranges can include habitats within more than one

(continued)

species have for humans means that the loss of even one species carries with it considerable economic and social costs, and has a direct and substantial effect on the ability of the United States, and humankind in general, to sustain themselves.[23] Considering that it is estimated that each day the world loses over one hundred species, the economic, social, and intangible costs to humankind become staggering.[24]

For instance, plant-derived drugs play a significant role in saving human lives around the globe.[25] Many of the world's

---

(continued)
nation, and it is not possible to preserve the global value of these international species through purely national schemes of protection. *See Secrets of Animal Navigation*, Nat'l Geographic, June 1991, at 70, 70-99 (discussing numerous examples of species that migrate internationally); *see Shrinking Herds and Habitats*, Nat'l Geographic, May, 1991, at 14, 14-15 (mapping habitat ranges of the African elephants across the national borders of no less than 35 countries and Asian elephant habitat ranges encompassing at least ten countries).

[23]*See* Council on Environmental Quality: The Executive Office of the President, *Environmental Quality: Twentieth Annual Report*, at 262 (1990):

> Improved scientific understanding of complex ecological interrelationships has helped to blur the distinction between international and domestic concerns. It is now understood that local or regional economic activities may have serious international consequences from direct, indirect or cumulative environmental effects. For example, economic development that contributes to the loss of a species, even within a relatively small region of the world, may have broad international implications.

Id.

[24]*See Species Loss: Crisis or False Alarm*, N.Y. Times, Aug. 20, 1991, at C1, col. 1. Noted biologist Dr. Edward O. Wilson of Harvard University, has calculated that 50,000 species are lost per year, or roughly six every hour of every day. *Id.* Dr. Wilson has likened the rate of species loss to a "genuine holocaust." *Id.; see also J. Abramovitz, Investing in Biological Diversity: U.S. Research and Conservation Efforts in Developing Countries*, 1 (1991).

[25]*See Loss of Biological Diversity, supra* n. 9, at 10; K. Miller & L. Tangley, *Trees of Life Saving Tropical Forests and Their Biological Wealth*,
(continued)

most important crops originate from the tropics and have been introduced by humans into other regions.[26] Remaining wild relatives and regional varieties are important sources of genetic diversity that play a major role in ensuring the long-term survival of crops against the traditional threats from pests and diseases, and new threats, such as those from global warming and ozone depletion.[27]

(continued)

23-25(1991); *Investing in Biological Diversity, supra*, n. 24, at 1-2 (1991) (even in the United States 25% of all prescriptions contain active ingredients that are still extracted from plants).

Nearly half the drugs in use today were developed from substances initially found in nature: products of plants, fungi and microorganisms. *See Loss of Biological Diversity, supra* n. 9, at 10. The benefits humankind can reap from one small species is dramatically demonstrated by the profound effects of the Madagascar Rosy Periwinkle *(Catharanthus roseus). Id.* Thirty years ago, a child with leukemia stood only a one-in-five chance of recovery, and affliction with Hodgkins disease was nearly always fatal. *Id.* Today, thanks to drugs derived from this tropical dry-forest plant, remission rates for leukemia victims stand at 99% and for Hodgkins sufferers at 70%. *Id.*

The tremendous medicinal wealth already derived from plant species pales in comparison to the untapped potential of these plant species; the large number of plant-derived drugs in use today come from fewer than 90 of the 250,000 identified plant species. *See Trees of Life, supra,* at 24.

[26] *See Investing in Biological Diversity, supra* n. 24, at 3. Asian derivative species include: soybean, wheat, rice, oranges, bananas, coconuts, sugar cane, apples, grapes and carrots. *Id.* Latin American agricultural species include: maize, potatoes, beans, manioc, tomatoes, cotton, tobacco and rubber. *Id.* Africa's agricultural contributions include: coffee, sorghum, millet, wheat and barley. *Id.*

[27] *See Loss of Biological Diversity, supra* n. 25, at 10. For example, the recent discovery of a perennial, virus-resistant, wild relative of maize, *Zea diploperennis*, has significant agricultural benefits. The rare Zea species is known to occupy only a single six-hectare site in Mexico, and was as likely to be lost to extinction as it was to be discovered. *Id.*

Moreover, the discovery of the intricate balance between species and ecosystems has repeatedly demonstrated that the survival of many of the world's valuable industries are entirely dependent on the survival of one or a few species.[28] For example, the loss of certain insect species could cause the demise of the Malaysian hardwood industry; extinction of the forest elephant could destroy the African forestry industry.[29]

Anyone who has ever watched a flock of geese pass overhead on their way to their winter home in Mexico, or a cheetah in full stride glide sinuously across the African plains, understands that the economic values of a species fail to reflect their intrinsic value.[30] The loss of these intrinsic values also has con-

---

[28]Animal species often serve as keystone species for entire ecosystems: if the keystone species is removed the ecosystem can "crash" and all its beneficial resources can be lost. *See* J. Brown & E. Heske, *Control of a Desert-Grasssland Transition by a Keystone Rodent Guild*, 250 Science 1705 (1990); *See also Trees of Life*, *supra* n. 25, at 19; P. Ashton, *Dipterocarp Reproductive Biology*, *in* H. Lieth & M. Werger, M., eds., *Tropical Rainforest Ecosystems: Biogeograpahical and Ecological Studies*, 219 (1989) (discussing role of insect species in pollination of Malaysia's dipterocarps); D. Chadwick, *Elephants: Out of Time, Out of Space*, Nat'l Geographic, May, 1990, at 2, 27-29 (discussing role of forest elephants in maintaining Africa's low-land forests).

[29]*See Ashton, supra*, n. 28 (discussing insect pollination of Malaysian hardwood); Chadwick, *supra*, n. 28 (discussing role of forest elephants in forest maintenance).

[30]The eminent conservationist Aldo Leopold notes of this intrinsic value:

> My notes tell me I have seen a thousand geese this fall. Every one of these in the course of their epic journey from the arctic to the gulf has on one occasion or another probably served man in some equivalent of paid entertainment. One flock perhaps has thrilled a score of schoolboys, and sent them scurrying home with tales of high adventure. Another, passing overhead of a dark night, has serenaded a whole city with goose music, and awakened who knows what questionings and memories and

(continued)

siderable effects within the United States; indeed, humankind's failure to protect the intrinsic values of the environment is a significant factor in most environmental problems.[31]

These dramatic global environmental effects make the argument for applying the "effects test" to environmental cases even more compelling than for market cases. Markets can recover from even the most damaging effects of extraterritorial actions. Once a species becomes extinct, however, it is lost forever. Environmental effects are no more remote or attenuated than market effects. Indeed, actions which harm the environment have direct and substantial impacts on the very markets which market statutes seek to protect.[32] Nor can it be argued that

(continued)

> awakened who knows what questionings and memories and hopes. A third perhaps has given pause to some farmer at his plow, and brought new thoughts of far lands and journeyings and peoples, where before was only drudgery, barren of any thought at all. I am sure those thousand geese are paying human dividends on a dollar value. Worth in dollars is only an exchange value, like the sale value of a painting or the copyright of a poem. What about replacement value? Supposing there were no longer any painting, or poetry, or goose music? It is a black thought to dwell upon, but it must be answered. In dire necessity somebody might write another *Iliad*, or paint an 'Angelus,' but fashion a goose?

A. Leopold, *A Sand County Almanac*, 229 (1949).

[31]See B. Piaseki & P. Asmus, *In Search of Environmental Excellence: Moving Beyond Blame*, 33-34 (1990). Current theory suggests that the fall of early Greek and Roman cultures was caused in part by the environmental degradation these societies brought upon themselves through their improper practices of resource management, including their abuse of animal species. *Id.* For instance, at the dedication of the Colosseum under Titus 9000 animals were slaughtered in a 100-day bacchanalian orgy of destruction. *Id.*

[32]*See* Dupont, *Corporate Environmentalism: A Collection of Remarks by DuPont Chairman, E.S. Woolard, Jr.*, (Nov. 19, 1990) (remarks given at Detroit Economic Club):

(continued)

environmental effects are not "intended."[33] Scientific understanding of the interrelated nature of the environment is too well developed — and widely appreciated — to plead ignorance of the extraterritorial effects which environmental harms are likely to cause. Actions which once might have been taken in excusable ignorance, today could only evince a reckless disregard for the foreseeable consequences.

It is their global nature and their consequent extraterritorial effects which distinguish environmental problems from the concerns addressed by labor and employment statutes, such as Title VII of the Civil Rights Act, recently considered in *EEOC v. Arabian American Oil Co.*, 111 S.Ct. 1227 (1991). To find evidence that Congress recognizes this distinction, it is only necessary to compare the broad array of international environmental agreements to which the United States is a party[34] with the dearth of international agreements addressing conditions of labor and employment.[35] Moreover, extraterritorial

(continued)

> Environmental issues . . . are now core values of the majority of consumers, and increasingly will drive our competitive future to improve the value of our goods and services. To be successful, our business operations and future developments must be in harmony with the public's understanding of environmental stewardship. Environment is both a societal and economic imperative for the 90's.

Id. See generally C. Morrison, *Managing Environmental Affairs: Corporate Practices in the U.S., Canada and Europe* (1991).

[33]The test for extraterritorial application of antitrust statutes is sometimes called the "intended effects" test, since the defendant must intend market effects. *See* Turley, *supra* note 1, at 611.

[34]*See* United States International Trade Commission, *International Agreements to Protect the Environment and Wildlife: Report to the Committee on Finance, U.S. Senate, on Investigation No. 332-287 Under Section 332 of the Tariff Act of 1930*, app. F (1991).

[35]Only one group of U.S. treaties has been found which affect labor and employment. The Treaties of Friendship, Commerce and Navigation have been held to provide foreign corporations operating in the U.S. with a partial *exemption* from Title VII. *See Speiss v. C. Itoh & Co.*, 643 F.2d 353 (1981).

actions are capable of causing precisely the type of environmental harm *within the United States* that Congress has sought to prevent.

Petitioner acknowledges that extraterritorial actions can have domestic environmental effects. Indeed, the Petitioner relies on the assertion that the inclusion of foreign species in the protection afforded by § 7 of the Endangered Species Act is explained by Congress' desire to protect *foreign* species from federal actions here or on the high seas. *See* Brief for the Petitioner at 35, note 23. It is logical that Congress intended to extend the same protection to *domestic* species from federal action abroad. Because the Endangered Species Act draws no distinction between domestic and foreign species, it follows that Congress also intended to protect foreign species from federal actions abroad.[36]

To fail to extend extraterritorial reach to § 7 would greatly curtail the scope and usefulness of the Endangered Species Act,[37] and would not accord with Congressional intent as expressed in § 7 and other sections of the statute. Accordingly, the Court should follow the well established rule in the long line of antitrust and other market-related cases, and extend extraterritorial jurisdiction to § 7 of the Endangered Species Act.

---

[36]This discrepancy in the Petitioner's reading of § 7 arises because Petitioner's interpretation is inconsistent with the "scheme" of the Endangered Species Act. *See Foley*, 336 U.S. at 286 (explicitly relying on the scheme of the statute to buttress its conclusion that Congress did not intend the Lanham Act to have extraterritorial reach). Additionally, it is schematically illogical to recognize a species as endangered, and provide it significant national protection, and at the same time, allow the same government which protects it nationally to destroy it internationally.

[37]The Court has inferred Congressional intent to extend extraterritorial jurisdiction where "to limit [the] locus [of the offense] to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute. . . ." *United States v. Bowman*, 260 U.S. 94, 98 (1922).

CONCLUSION

The *Foley* presumption does not apply to environmental law because *Foley's* underlying assumptions do not apply. In the environmental field Congress has shown that it understands and is concerned with international and extraterritorial effects. Congress also has shown that it understands that international law requires United States environmental laws to apply abroad to avoid harm to the environment of other states. Further, Congress understands that potential conflicts could arise between United States laws and those of other nations if United States environmental laws are *not* applied extraterritorially.

Congress' contemporary understanding and concern with international environmental issues requires that the *Foley* presumption be reversed, so that where an environmental statute is ambiguous it will be presumed that Congress intends the legislation to apply extraterritorially.

If the presumption is not reversed, environmental problems have sufficient effects within the United States even when they occur abroad, to satisfy the "effects" test that has been used to sustain the extraterritorial application of antitrust and other market-based statutes. Accordingly, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

DURWOOD J. ZAELKE*
ROBERT F. HOUSMAN
DONALD M. GOLDBERG
DAVID R. DOWNES

CENTER FOR INTERNATIONAL
ENVIRONMENTAL LAW—U.S.**
1621 Connecticut Avenue, N.W.
Washington, D.C. 20009
(202) 332-4840

Counsel for Amici Curiae

August 29, 1991

---

*Counsel of Record.

**Simon Cordery and Barry Pershkow, summer associates at the Center for International Environmental Law—U.S., assisted in the preparation of this brief.

APPENDIX

1. Ecotropica is a Brazilian nongovernmental organization whose primary missions are establishing protected areas and encouraging the sustainable use of natural resources as a guarantee of the quality of life of society as a whole. Ecotropica is currently focusing its efforts in Brazil's Mato Grosso and the La Plata River Basin regions.

The Mato Grosso contains one of the largest contiguous wetlands in the world, the Pantanal, and part of the most biologically diverse savannah in the world, the Cerrado. The Pantanal region contains habitat which supports such endangered animals as the jaguar, the marsh deer, the maned wolf, the giant anteater, the hyacinth macaw, and the giant otter. A special emphasis within Ecotropica's Pantanal program is ensuring the continued survival and replenishment of the jaguar.

Development efforts, funded in part or in whole by United States' monies, both directly and indirectly through multilateral development banks, have already adversely affected these regions and have the potential to inflict even greater adverse consequences. For example, the World Bank, of which the United States is the majority shareholder, is funding DDT spraying in and around these regions. The use of DDT, which in the United States caused the American bald eagle to become endangered, has already proven its adverse effects on the survival of flourishing species, let alone those already endangered. Ecotropica is similarly concerned that future United States involvement will cause even greater harms to the species Ecotropica is working so diligently to preserve.

2. The Slovak Union of Nature and Landscape Protectors was founded in 1969 as a voluntary organization. It is an association of individuals, organizations and institutions of the

Slovak Republic involved in protecting nature and landscape. SZOPK's goals are to further public awareness of environmental issues, to increase public participation in solving both short-term and long-term environmental problems and to influence decision making.

SZOPK has hundreds of local chapters, working on a variety of local, national and international environmental issues. Many of the chapters are involved with the preservation of rare and endangered species. For example, some chapters work to preserve the Hucha Hucha, a rare fish of the salmon family found only in the Danube river system. Chapters are also actively working to protect rare birds such as the Eurasian peregrine falcon and the sokol falcon. Other areas of involvement include efforts to preserve specific species of plants, lizards, and amphibians.

The environmental impact of United States activities abroad is already being felt in the Czech and Slovak Federal Republic. For example, United States efforts to build a Voice of America broadcast tower in Israel will adversely affect the Eurasian Peregrine falcon, which SZOPK is trying to preserve in the Czech and Slovak Republic. SZOPK is also concerned that in the future United States activities will become more prevalent and may adversely affect the other species it is working to protect.

3. Fundación de Parques Nacionales is a Costa Rican non-profit foundation dedicated to promoting the establishment, protection and management of national parks and reserves in Costa Rica. An essential element of Fundación Parques Nacionales efforts to preserve these areas is the protection of the species which inhabit them. These efforts focus on preserving the quality of the flora and fauna of Costa Rica's unique tropical dry forests, including La Amistad Biosphere Reserve. Nominated for inclusion as a World Heritage Site by the United Nations

Educational, Scientific and Cultural Organization, La Amistad is one of the richest and most varied ecosystems in Central America. Fundación de Parques has also been instrumental in working to preserve the Costa Rican leatherback sea turtle and its habitats. Each of these two projects, drawn from the over 35 ongoing projects of the Fundación, involves efforts to protect highly fragile ecosystems and the threatened or endangered species that inhabit these ecosystems. If this Court does not recognize that the protections of the Endangered Species Act apply in Costa Rica and other nations, the efforts of the Fundación will continue to be directly and adversely affected.

4. Greenpeace International (formally known as Stichting Greenpeace Council) is a Netherlands nonprofit foundation that coordinates and assists Greenpeace organizations in more than 23 countries around the world with more than 4 million contributors. Greenpeace International engages in research, education, lobbying, direct action, litigation and advocacy to protect and preserve the global environment.

In the course of its work, Greenpeace International regularly confronts the global nature of environmental problems and their solutions. Many of Greenpeace's efforts to defend endangered and threatened species relate to regions in which activities funded or otherwise assisted by the United States directly affect environmental quality. Examples include Greenpeace's campaigns to protect rainforests and the many unique species that inhabit such ecosystems in Latin America and Southeast Asia and to preserve Antarctica and the species which live or migrate through it. These efforts are being adversely affected by the failure to apply the United States Endangered Species Act, including section 7, to activities funded, assisted or directly undertaken by United States agencies in other countries.